

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

November 16, 2011

Mr. John Brady
Ms. Frances Mergliano
328 Blossom Way
Millsboro, Delaware 19966

Patrick Scanlon, Esquire
Law Offices of Patrick Scanlon, P.A.
203 NE Front Street, Suite 101
Milford, Delaware 19963

Re: Brady v. Wells Fargo Bank;
C.A. No. S10A-11-008

On Appeal from the Court of Common Pleas: **AFFIRMED**

Date Submitted: September 29, 2011

Date Decided: November 16, 2011

Dear Mr. Brady, Ms. Mergliano, and Counsel:

Pending before the Court is an appeal from a Court of Common Pleas decision filed by John Brady and Frances Mergliano (collectively, “Appellants”). For the reasons stated herein, the decision is **AFFIRMED**.

Procedural and Factual Background

On August 5, 2009, Wells Fargo Financial Bank, a South Dakota State Chartered Bank (hereinafter, “Wells Fargo”) filed a Complaint against the Appellants for the balance owed on a credit card issued by Wells Fargo. Appellants filed an Answer to the

Complaint on or about October 2, 2009, denying any knowledge of the account. On October 21, 2009, Wells Fargo filed its first Request for Admissions attaching account statements for the period from March 5, 2007, to December 8, 2008. These statements were addressed to Appellants at the two addresses where Appellants lived during that period of time. The Request for Admissions clearly stated, “All responses must be received within thirty (30) days or the requests for admissions will be deemed to have been admitted pursuant to Civil Rule 36.”

At a pre-trial conference held on June 17, 2010, the trial court entered an order establishing August 27, 2010, as the cutoff date for discovery. On June 8, 2010, Wells Fargo filed a Second Request for Admissions, attaching copies of checks dated January, February and March 2008 and signed by Appellant John Brady. The checks were made payable to Wells Fargo and contained a reference to the account that is the subject of this suit. Again, the Second Request for Admissions contained the following language, “All responses must be received within thirty (30) days or the requests for admissions will be deemed to have been admitted pursuant to Civil Rule 36.”

On August 5, 2010, after the expiration of thirty days from the filing of Wells Fargo’s Second Request for Admissions, Wells Fargo filed a Motion for Summary Judgment noticed for September 2, 2010. On August 9, 2010, Appellants filed an objection to the Motion for Summary Judgment, arguing the Motion was premature because the discovery cut-off deadline was August 27, 2010.

Defendants mailed Responses to the Second Request for Admissions on August 26, 2010. In that response, Appellant John Brady admitted that he signed the three checks made out to Wells Fargo in reference to the disputed account.

Wells Fargo's Motion for Summary Judgment was heard on September 2, 2010, with Commissioner Joseph W. Maybee presiding. Appellants did not appear at the hearing. Commissioner Maybee issued a Commissioner's Report recommending that judgment be entered against Appellants due to their failure to appear at the hearing or to otherwise contest the merits of Wells Fargo's Motion for Summary Judgment. Appellants appealed Commissioner Maybee's recommendation and argued they did not have a duty to appear at the hearing because they were awaiting a response from the trial court as to their objection to the timing of the filing of Wells Fargo's Motion for Summary Judgment.

After considering Appellants' position, on November 23, 2010, the trial court accepted the Commissioner's Report and entered a default judgment against Appellants in the amount of \$8,441.75, plus post-judgment interest at 8.9% per annum from the date of judgment until paid. The Appellants did not move to set aside the default judgment pursuant to Court of Common Pleas Civil Rule 55(c)¹ but filed an appeal to this Court on November 30, 2010.

Discussion

The question presented in this appeal is a very limited one: Did the trial court abuse its discretion in entering a default judgment against Appellants for their failure to

¹ Court of Common Pleas Civil Rule (hereinafter, "Rule") 55(c) provides, "The Court may set aside a judgment by default in accordance with Rule 60(b)."

appear at the motion hearing?

This Court sits as an intermediate appellate court when reviewing appeals from the Court of Common Pleas.² The Court will review questions of law *de novo* and review the lower court's factual findings pursuant to a "clearly erroneous" standard.³ The Court will "correct errors of law and ... review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."⁴

Appellants ask the Court to find that their absence from the hearing on the Motion for Summary Judgment was excusable because they were awaiting a ruling on their objection to the Motion. This argument was considered by the trial court. The trial court found,

The [Appellants'] obligation to appear at the hearing on [Wells Fargo's] Motion was not extinguished by the mere act of making an objection that the Motion was premature. Such objections are considered by the Court at the hearing after oral argument. The Defendants' failure to appear on the hearing date is, therefore, inexcusable.

Appellants received written notice of the hearing on Wells Fargo's Motion for Summary Judgment. Appellants do not allege they received any indication from the trial

² *Disabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002).

³ *J.S.F. Properties, LLC v. McCann*, 2009 WL 1163494, at *1 (Del. Super. Ct.).

⁴ *State Farm Mut. Auto. Ins. Co. v. Dann*, 794 A.2d 42, 45 (Del. Super. Ct. 2002) (internal quotation marks and citation omitted).

court that the hearing would not be held. Moreover, the record reflects that Appellants failed to counter Wells Fargo's Motion for Summary Judgment with an affidavit of their own as required by the Rules under the circumstances.⁵ The trial court did not abuse its discretion in entering a default judgment against Appellants.

Conclusion

For the reasons set forth above, the trial court's order awarding damages to Wells Fargo in the amount of \$8,441.75, plus post-judgment interest at 8.9% per annum from the date of judgment until paid is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

oc: Prothonotary
cc: Court of Common Pleas

⁵ "When a motion for summary judgment is made and supported as provided in this Rule [*i.e.*, by way of affidavit], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Rule 56(e).